[2023] 11 S.C.R. 130 : 2023 INSC 744

CASE DETAILS

SMT. SHIRAMABAI W/O PUNDALIK BHAVE AND OTHERS

v.

THE CAPTAIN, RECORD OFFICER FOR O.I.C. RECORDS, SENA CORPS ABHILEKH, GAYA, BIHAR STATE AND ANR.

(Civil Appeal No. 5262 of 2023)

AUGUST 18, 2023

[HIMA KOHLI AND RAJESH BINDAL, JJ.]

HEADNOTES

Issue for consideration : Whether the order passed by the High Court denying the appellants-mother and her children, the entitlement to receive the pension payable on the demise of her husband-military personnel is sustainable, where the military personnel contracted a marriage with the appellant and two children born from their relationship, during subsistence of his marriage with the legally wedded wife but, subsequently a decree of divorce was passed, dissolving the said marriage and meanwhile, the military personnel was discharged from service and granted service pension.

Service law : Pensionary benefits – Family pension – Claim of, by woman cohabiting as wife with a government personnel – Denial of claim of family pension to the applicant and her children by the High Court – Sustainability of:

Held : Not sustainable – Presumption ought to have been drawn in favour of the validity of the marriage between the deceased and the applicant – More so, when during his life time, the military personnel sought deletion of the name of his previous wife from his service record and endorsement of the name of the applicant, which was duly acted upon by the authorities – Also the ex-wife did not claim any family pension from the authorities – Furthermore, two children born to the applicant, have been held entitled to the estate of the military personnel by the High Court – Thus, the applicant entitled to receive the pension payable on the demise of the military personnel – Children entitled to the said relief till the age of 25

years – Order passed by the High Court set aside – Pension Regulation for the Army, 1961 – reg 219(iii). [Paras 11, 16, 20 and 21, 22]

Service law: Pensionary benefits – Family pension – Claim of, by the woman cohabiting as wife with a government personnel:

Held : If a man and woman cohabit as husband and wife for a long duration, there is a presumption in their favour that they were living together as a consequence of a valid marriage and claimant would be entitled to family pension. [Paras 11 and 21]

Evidence Act, 1872 – s. 114 – Court may presume existence of certain facts – Man and woman cohabiting as husband and wife for a long duration – Presumption u/s. 114:

Held : There would be a presumption in favour of a marriage when man and woman have continuously cohabited for a long spell – However, the presumption is rebuttable and can be rebutted by leading unimpeachable evidence – When there is any circumstance that weakens such a presumption, courts ought not to ignore the same – Burden lies heavily on the party who seeks to question the cohabitation and to deprive the relationship of a legal sanctity. [Para 20]

LIST OF CITATIONS AND OTHER REFERENCES

Indra Sarma v. V.K.V. Sarma (2013) 15 SCC 755 : [2013] 14 SCR 1019; *Dhannulal And Others v. Ganeshram And Another* (2015) 12 SCC 301 : [2015] 4 SCR 199; *KattukandiEdathil Krishnan and Another v. Kattukandi Edathil Valsan and Others* 2022 SCC OnLine SC 737; *Andrahennedige Dinohamy and Another v. Wijetunge Liyanapatabendige Balahamy and Others* 1927 SCC OnLine PC 51; *Mohabbat Ali Khan v. Muhammad Ibrahim Khan And Others* 1929 SCC OnLine PC 21; *Badri Prasad v. Dy. Director of Consolidation and Others* (1978) 3 SCC 527 : [1979] 1 SCR 1; *S.P.S. Balasubramanyam v. Suruttayan alias Andali Padayachi and Others* (1994) 1 SCC 460; *Gokal Chand v. Parvin Kumari alias Usha Rani* (1952) 1 SCC 713; *Tulsa and Others v. Durghatiya and Others* (2008) 4 SCC 520 : [2008] 1 SCR 709; *Madan Mohan Singh and Others v. Rajni Kant and Another* (2010) 9 SCC 209 : [2010] 10 SCR 30 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5262 of 2023.

From the Judgment and Order dated 25.06.2013 of the High Court of Karnataka Circuit Bench at Dharwad in RSA No.6079 of 2010.

Appearances:

Rahul Joshi, Adv. for the Appellant.

K M Nataraj, ASG, R Bala, Sr. Adv., A K Kaul, Sharath Nambiar, Sautam Bhardwaj, Ms. Indira Bhakar, Arvind Kumar Sharma, Advs. for the Respondents.

JUDGMENT/ORDER OF THE SUPREME COURT

JUDGMENT

HIMA KOHLI, J.

1. Leave granted.

2. The appellants are aggrieved by the order dated 25th June, 2013, passed by the High Court of Karnataka Circuit Bench at Dharwad whereby the Regular Second Appeal[1] filed by them against the judgment and decree dated 16th September, 2010, passed by the Principal District and Sessions Judge, Belgaum[2], has been dismissed. Vide judgment dated 16th September, 2010, the learned Principal District Judge reversed the judgment and decree dated 22nd December, 2007, passed by the learned Civil Judge (Senior Division) Chikodi[3] whereunder the suit instituted by the appellants for seeking a declaration to the effect that the appellant no. 1 was the legally wedded wife of Late Subedar Pundalik Bhave[4] and the appellants no. 2 and 3 are their legitimate children, was decreed in their favour and it was held that they were entitled to the pensionary benefits payable by the respondents herein and standing in the name of the deceased Subedar Bhave.

1 Regular Second Appeal No. 6079 of 2010 (DEC)
2 Regular Appal No. 70 of 2008
3 In Original Suit No. 73/05
4 For short "Late Subedar Bhave"

3. Facts necessary for the elucidation of the controversy at hand are as follows:

3.1 Late Subedar Bhave was enrolled in the Army in the year 1960[5]. On 17th July, 1972, he got married to one Smt. Parvati who died in about two and a half years[6]. Thereafter, the deceased got married to one Smt. Anusuya[7]. During the subsistence of his marriage with Anusuya, he married the appellant no.1 herein[8]. Appellants No. 2 and 3 are the offspring of the deceased and appellant no. 1. On 25th January, 1984, the deceased was discharged from service at his request and was granted service pension at the rate of ₹ 376/- (Rupees three hundred seventy six only) per month. On 15th November, 1990, the deceased and Anusuya were granted a decree of divorce by mutual consent[9] and he paid a lumpsum amount of ₹ 15,000/- (Rupees fifteen thousand only) to her. Thereafter, the deceased approached the respondent No. 2 for deleting the name of Anusuya and endorsing the name of the appellant No. 1 in the PPO. He also submitted a certificate[10] issued by the Village Sarpanch, Gram Panchayat Bahirewadi, certifying that he and the appellant No. 1 had got married along with a copy of their wedding card as proof of the marriage.

3.2. Subedar Bhave expired in the year 2001[11]. Thereafter, appellant No. 1 approached the respondents for grant of family pension[12]. The said request was, however, rejected by the respondents[13] on the ground that the deceased had got divorced in November, 1990, whereas the appellant No.1 claimed to have got married to him in February, 1981, during the subsistence of the earlier marriage.

3.3. In 2005, the appellants instituted a civil suit for declaration praying *inter alia* for issuing directions to the respondents to disburse the pensionary benefits payable on the demise of the deceased, Subedar Bhave. As noticed above, the trial Court decreed the said suit in favour of the appellants and held that they were entitled to receive the terminal benefits of the deceased,

5 On 21st July, 1960
6 On 26th January, 1975
7 On 17th March, 1975
8 On 21st February, 1981
9 M.C. No. 21/1990
10 Dated 08th October, 1994
11 on 12th January, 2001
12 Vide application dated 09th July, 2001
13 Vide letter dated 01st October, 2001

particularly, since no claim was ever laid on the said amount by his ex-wife Anusuya. Aggrieved by the said order, the respondents preferred an appeal[14], which was allowed and the judgment and decree passed by the learned Civil Judge was set aside. The said order was assailed by the appellants in a Regular Second Appeal[15] that came to be dismissed by the High Court. Subsequently, on the basis of the Review Application, the court clarified[16] that the appellants No. 2 and 3 herein would be entitled to the estate of Late Subedar Bhave which is in the custody of the respondents.

4. Mr. Rahul Joshi, learned counsel, appearing for the appellants has contended that High Court erred in holding that the appellant No. 1 cannot be declared as the wife of the deceased Subedar Bhave, on the ground that their marriage had taken place during the subsistence of his marriage with Anusuya. He submitted that the embargo placed under Section 5(1) of the Hindu Marriage Act, 1955[17] that recognizes a marriage solemnized between any two Hindus on the condition that neither party has a spouse living at the time of marriage, would not prejudice the case of the appellant No. 1 for being recognized as the wife of the deceased in view of the long period of cohabitation between them, which circumstance would attract the presumption of the marriage between the parties being legal, as contemplated under Section 114 of the Evidence Act, 1872[18]. Section 114 permits the Court to presume the existence of certain facts which it thinks are likely to have happened in relation to the facts of a particular case. It was contended that the said presumption of a legitimate marriage between the deceased and the appellant No. 1 become stronger in the instant case as during his lifetime, the deceased had approached the respondents with an application seeking endorsement of the name of the appellant No. 1 in his Service Book.

5. It was further submitted on behalf of the appellants that even if the status of the appellant No. 1 could not be treated as that of a legally wedded wife of the deceased till the date a decree of divorce was granted, dissolving his marriage with Anusuya, after the said date i.e. from 16th November, 1990, till the date of demise of the deceased[19], admittedly, he and

14 Regular Appeal No. 70 of 2008
15 Regular Second Appeal No. 6079 of 2010
16 *Vide order dated 16th October, 2014*
17 For short "HMA"
18 For short 'Evidence Act'
19 on 12th January, 2001

the appellant No. 1 were cohabiting, thereby entitling the appellants to claim the pensionary benefits of the deceased. It was also pointed out that at no stage did the first wife, namely, Anusuya lay any claim to the pensionary benefits of the deceased and therefore, the respondents ought not to have turned down the legitimate claim of the appellants, more so, when the appellant no. 1 had spent a large part of her life living with the deceased as man and woman and any shadow cast on their relationship stood dispelled once the decree of divorce was passed in November, 1990, dissolving the marriage of the deceased and Anusuya. To substantiate this submission learned counsel has cited decisions in ***Indra Sarma v. V.K.V. Sarma***[20]***, Dhannulal And Others v. Ganeshram And Another***[21] ***and Kattukandi Edathil Krishnan and Another v. Kattukandi Edathil Valsan and Others***[22] passed by this Court.

6. On the other hand, Mr. K M Nataraj, learned Additional Solicitor General[23] appearing for the respondents has supported the impugned judgment and submitted that the marriage between deceased the appellant No. 1 and the deceased is a void marriage under Section 11 of the HMA, as the said marriage was contracted during the subsistence of the marriage between Subedar Bhave and Anusuya. He submitted that the said void marriage cannot be given a legal sanctity on the basis of the subsequent dissolution of the marriage and cohabitation of the deceased and the appellant No. 1.

7. Learned ASG also referred to Regulation 219 of the Pension Regulation for the Army, 1961 which lays down the conditions of eligibility for grant of family pension and submitted that Regulation 219(iii) makes it clear that a widow who has not been married is entitled to pensionary benefits and the appellant No. 1, not being the widow of the deceased as recognized in law, is not entitled to any relief. As for the appellant No. 2 and 3, offspring of Late Subedar Bhave and the appellant 1, it is submitted that they too would not be entitled to any relief under the Regulations, in as much as, both the said appellants have crossed the age of 25 years whereas under Regulation 219(iv), the son of an employee would be eligible for family pension if he is below the age of 25 years. Lastly, it was submitted that the deceased had informed the respondents about contracting a marriage with the appellant No. 1 only in the year 1990. He had suppressed

20 (2013) 15 SCC 755
21 (2015) 12 SCC 301
22 2022 SCC OnLine SC 737
23 For short "ASG"

the said fact till he was discharged from service in 1984. Had this fact been brought to the notice of the authorities, appropriate action would have been taken against the deceased for misconduct.

8. We have heard the arguments advanced by learned counsel for the parties, perused the records and the impugned judgment. The limited issue that requires to be answered is whether the appellants would be entitled to claim pensionary benefits of Late. Subedar Bhave in the facts of the instant case where he had got married to the appellant No.1 during the subsistence of his marriage with Anusuya, but, subsequently a decree of divorce was passed, dissolving the said marriage.

9. As has been noticed above, the first wife of Subedar Bhave had passed away in the year 1975[24]. On 17th March, 1975, he had got married to Anusuya. It appears that there was no issue from the said marriage. The deceased contracted a marriage with the appellant No. 1 herein during the subsistence of his marriage with Anusuya[25].Three years down the line, he was discharged from service and granted service pension. The divorce by mutual consent between the deceased and Anusuya materialized only in November, 1990. The said decree of divorce is not in question. It is also not in dispute that the deceased had approached the respondents for seeking deletion of the name of Anusuya and for endorsing the name of the appellant No. 1 in his Service Book. Pertinently, the respondent No. 2 did include the name of the appellant No. 1 in the Service Book of the deceased, as his wife which is apparent from the document[26] filed by the respondents along with their counter affidavit. The contents of the said document are extracted hereinbelow for ready reference:-

"

Sena Seva Corps Abhilekh

(Pashu Parivahan)

ASC Records (AT)

Paharpur, Gaya 823005

JC-85229/Doss /EFP=II 05 Jul 99

24 26th January, 1975
25 21st February, 1981
26 Dated 5th July, 1999

National Ex-Servicemen Co-Ordinates Committee

380, Sonwar Peth, CHIKODI

Distt. Belgaum (Karnataka) 591201

ENDORSEMENT OF FAMILY JOINT NOTIFICATION

1. Refer to your letter No. N Ex CO/CED dated 22 May 99

2. Personal Occurrence regarding divorce of 1st wife Smt. Anusuya has been pub vide this Office Pt II Order No. NE /021/0002/89 and further married to Smt. 'Shirmabai' (2nd Wife) has also been pub vide Pt. II Order No. NE/021/0003/99 and both case have been recorded in Service docu.

Sd/-

Capt.

Record Officer

For OIC Records"

10. On the demise of Subedar Bhave in the year 2001, when the appellant No. 1 approached the respondents claiming family pension, the said request was rejected only on the ground that her marriage with Late Subedar Bhave had taken place in February, 1981 whereas he and Anusuya, got divorced much later, in the year 1990.

11. It is no longer *res integra* that if a man and woman cohabit as husband and wife for a long duration, one can draw a presumption in their favour that they were living together as a consequence of a valid marriage. This presumption can be drawn under Section 114 of the Evidence Act that states as follows:

> "114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."

12. In this above context, we may refer to A***ndrahennedige Dinohamy and Another v. Wijetunge Liyanapatabendige Balahamy and Others***[27], where the Privy Council observed thus:

"…..where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved,

27 1927 SCC OnLine PC 51

that they were living together in consequence of a valid marriage and not in a state of concubinage.

xxx xxx xxx

"The parties lived together for twenty years in the same house, and eight children were born to them. The husband during his life recognized, by affectionate provisions, his wife and children. The evidence of the Registrar of the District shows that for a long course of years the parties were recognized as married citizens, and even the family functions and ceremonies, such as, in particular, the reception of the relations and other guests in the family house by Don Andris and Balahamy as host and hostess—all such functions were conducted on the footing alone that they were man and wife. No evidence whatsoever is afforded of repudiation of this relation by husband or wife or anybody."

13. In ***Mohabbat Ali Khan v. Muhammad Ibrahim Khan And Others***[28], it was again observing by the Privy council that:

> "….The law presumes in favour of marriage and against concubinage when a man and a woman have cohabited continuously for a number of years……"

14. Similarly, in ***Badri Prasad v. Dy. Director of Consolidation and Others***[29], this Court held as follows:

> "…….A strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon bastardy….."

15. In ***S.P.S. Balasubramanyam v. Suruttayan alias Andali Padayachi and Others***[30], this Court held as under:

> "4. What has been settled by this Court is that if a man and woman live together for long years as husband and wife then a presumption arises in law of legality of marriage existing between the two. But the presumption is rebuttable (see Gokal Chand v. Parvin Kumari[31]).

28 1929 SCC OnLine PC 21
29 (1978) 3 SCC 527
30 (1994) 1 SCC 460
31 (1952) 1 SCC 713

16. It is true that there would be a presumption in favour of the wedlock if the partners lived together for a long spell as husband and wife, but, the said presumption is rebuttable though heavy onus is placed on the one who seeks to deprive the relationship of its legal origin to prove that no marriage had taken place (refer: ***Tulsa and Others v. Durghatiya and Others***[32]).

17. A similar view has been taken by this Court in ***Madan Mohan Singh and Others v. Rajni Kant and Another***[33], ***Indra Sarma v. V.K.V. Sarma*** (supra) and ***Dhannulal And Others v. Ganeshram And Another.***

18. In the case of **Gokal Chand v. Parvin Kumari alias Usha Rani** (supra) this Court observed thus :

> "……Continuous cohabitation of man and woman as husband and wife and their treatment as such for a number of years may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the court cannot ignore them."

19. In ***Kattukandi Edathil Valsan's*** Case (*supra*), citing the abovesaid decisions and relying on Section 114 of the Evidence Act, this Court held in the facts of the said case that there was a presumption of the marriage between the parents of the plaintiffs on the ground of their long cohabitation status, entitling their offspring to claim their share in the suit schedule property.

20. It can be discerned from the aforesaid line of decisions that the law infers a presumption in favour of a marriage when a man and woman have continuously cohabitated for a long spell. No doubt, the said presumption is rebuttable and can be rebutted by leading unimpeachable evidence. When there is any circumstance that weakens such a presumption, courts ought not to ignore the same. The burden lies heavily on the party who seeks to question the cohabitation and to deprive the relationship of a legal sanctity.

21. In the instant case, if the period upto the year 1990 was to be excluded as the marriage between Late Subedar Bhave and Anusuya had got dissolved only on 15th November, 1990, fact remains that even thereafter, the

32 (2008) 4 SCC 520
33 (2010) 9 SCC 209

deceased had continued to cohabit with the appellant No. 1 for eleven long years, till his demise in the year 2001. The appellant No.1 was the mother of two children born from the relationship with the deceased, namely, appellants Nos.2 and 3. Appellants No.2 and 3 have been held entitled to the estate of the deceased by virtue of the order passed by the High Court on the Review application moved by them. In the above background, a presumption ought to have been drawn in favour of the validity of the marriage between the deceased and the appellant No. 1, more so, when during his life time, the deceased had approached the respondent authorities for seeking deletion of the name of his previous wife - Anusuya from his service record and for endorsement of the name of the appellant No. 1 therein, which was duly acted upon by the respondents vide letter dated 05th July, 1999. It is also not in dispute that the ex-wife did not claim any pension from the respondents on the demise of Subedar Bhave.

22. In view of the aforesaid discussion, the impugned judgment dated 25th June, 2013, passed by the High Court of Karnataka Circuit Bench at Dharwad endorsing the order dated 16th September, 2010, passed by the First Appellate Court cannot be sustained and are, accordingly, quashed and set aside. The judgment and decree dated 22nd December, 2007, passed by the learned Civil Judge (Senior Division), Chikodi is restored. The appellant No.1 is held entitled to receive the pension payable on the demise of Late Subedar Bhave. As for the appellants No. 2 and 3, they would be entitled to the said relief till the date they attained the age of 25 years.

23. The appeal is allowed on the above terms while leaving the parties to bear their own costs. Pending applications, if any, stand disposed of.

Headnotes prepared by:
Nidhi Jain

Appeal allowed.